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C O N F I D E N T I A L SECTION 01 OF 02 DUBLIN 001396

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TREASURY FOR JACOBSON AND FREIS

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TAGS: [EFIN](#) [KTFN](#) [PGOV](#) [PREL](#) [EI](#)
SUBJECT: NEXT STEPS ON TFTP: IRELAND TAKES HARD LINE ON
SWIFT

REF: A. STATE 194473
[1](#)B. TREASURY-EU MEMBER STATE POSTS TELCON OF
DECEMBER 6
[1](#)C. YOUNG-BLANK ET AL E-MAIL OF SEPTEMBER 25
[1](#)D. STATE 103650
[1](#)E. STATE 184417

Classified By: Deputy Chief of Mission Jonathan Benton; Reasons 1.4 (B)
and (D).

[1](#)1. (C) Summary: Ireland's Data Protection Commission and Department of Finance have taken a hard line in support of the Article 29 Report criticizing financial data transfers under the SWIFT program. Both the Commission and the Department support U.S.-EU cooperation on tracking terrorism finance, but they believe that such cooperation should proceed on the basis of a negotiated U.S.-EU agreement on data sharing that respects EU and domestic Irish legislation. In planned discussions with the Irish Department of Justice, Post intends to underscore the importance of balance between data privacy and national security, thought it will be difficult for any Irish authorities to take a position appearing to contradict the Data Protection Commission. End summary.

The Irish Data Commissioner's Hard Line

[1](#)2. (C) Ireland's Data Protection Commission fully endorsed the November 22 Article 29 Working Party report on SWIFT and had written to Irish financial institutions about EU concerns outlined in the report, Data Protection Commissioner William Hawkes told Pol/Econ Chief on December 8. Hawkes noted that he had also communicated his view to the Department of Finance that SWIFT's actions had breached EU and domestic Irish financial legislation. He explained that the SWIFT issue had placed him in "real difficulty," since he was one of the EU data protection commissioners most favorably disposed to the USG, as evident in his participation in exchanges on the Safe Harbor initiative. (Comment: In fact, Hawkes has been pro-active with the Embassy on data protection issues, calling on Pol/Econ Chief before the December 2005 Safe Harbor seminar in Washington and sharing Irish views on the recent U.S.-EU PNR negotiations, per ref C.) Pol/Econ Chief emphasized ref A and B points on the importance of balance between privacy concerns and national security, but Hawkes responded that those points were moot, adding that there was no issue as to Ireland's and the EU's commitment to work with the United States to track terrorist financing.

[1](#)3. (C) Hawkes observed that the USG, having flouted EU law with a unilateral approach to data transfer through SWIFT,

should make a gesture toward the EU by initiating dialogue on a possible U.S.-EU agreement on bank data sharing, not unlike the U.S.-EU PNR arrangements. Pol/Econ Chief replied that the USG did not see the need for an overarching agreement with the EU on the SWIFT program, and he also cited helpful steps by SWIFT to draft "informed consent" language to ensure full compliance with the EU Data Privacy Directive. Hawkes said that he questioned the acceptability of the "informed consent" approach, as bank customers would have no choice to comply if they wished to conduct a financial transaction. (Comment: Hawkes' press statement on the Article 29 report can be found at www.dataprotection.ie, under "data protection news.")

The Department of Finance Agrees

14. (C) The Irish Department of Finance accepted the Data Protection Commission's view that the USG had breached Irish and EU law on data privacy, Pol/Econ Chief was told by Paddy Howard, Department of Finance Assistant Principal Officer for Banking Affairs, on December 8. Howard, who had separately discussed the Article 29 report and ref A points with Commissioner Hawkes, said that Ireland strongly supported trans-Atlantic cooperation on tracking terrorist financing. He cautioned, however, that such cooperation could only proceed on the basis of respect for Ireland's laws and regulatory regime for data protection. Howard observed that ref A points and the information that Post had provided in June on the SWIFT program (per ref D) had seemingly emphasized SWIFT's compliance with U.S. law, while neglecting consideration of EU regulations. "We have no doubt that U.S. authorities are not abusing this information," explained Howard, "but we cannot excuse our regulatory regime from its

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legislative duty." He agreed with Commissioner Hawkes that U.S.-EU dialogue on a data-sharing agreement was necessary and that SWIFT's initiative on "informed consent" was insufficient to allay EU concerns.

15. (C) Comment: Post is attempting to schedule meetings with the Irish Department of Justice, including with Justice Minister and Deputy Prime Minister, Michael McDowell, to underscore the national security dimensions of financial data transfer. We note, however, that it will be difficult at this point for any Irish ministry to take a position that might be seen to contradict Commissioner Hawkes' public pronouncement on the issue. Post strongly recommends that any USG data protection delegation that might plan to visit EU Member States in early 2007, per ref E, consider stopping in Dublin.
FOLEY